

MEMORANDUM OPINION

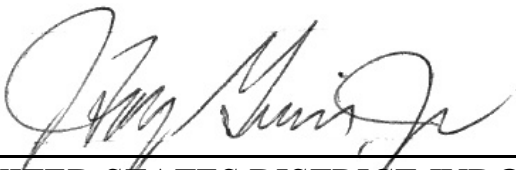
The basis for Commissioner’s motion is that this action was not timely filed under 42 U.S.C. § 405(g), which provides that a civil action seeking review of a final decision by the Commissioner must be “commenced within sixty days after the mailing to him of notice of such decision....” The Commissioner has interpreted “mailing” as the date of receipt by the individual of the Appeals Council’s notice of denial of request for review of the presiding officer’s decision. 20 C.F.R. § 422.210(c). The date of receipt is presumed to be five days after the

date of such notice, unless there is a reasonable showing to the contrary made to the Appeals Council. 20 C.F.R. §§ 404.901, 416.1401, 422.210(c).

The uncontradicted declaration of Earnest Baskerville establishes that on December 22, 2009, the Appeals Council mailed a notice of it's action on the plaintiff's request for review and of the right to commence a civil action within sixty (60) days from the date of receipt. Based upon the presumptive date of receipt, the time limit for filing plaintiff's complaint was February 25, 2010. Plaintiff's complaint was filed on March 1, 2010. The plaintiff has shown no circumstances in the present case that would justify a toling of the sixty-day requirement of 42 U.S.C. § 405(g). Accordingly, there exist no genuine issue as to any material fact, and plaintiff's appeal is due to be dismissed with prejudice.

An appropriate order will be entered contemporaneously herewith.

DONE and ORDERED 1 July 2010.


UNITED STATES DISTRICT JUDGE
J. FOY GUIN, JR.